

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

SEYBA DIALLO

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CIVIL ACTION NO.: 12-0812

VS.

JOE P. YOUNG, PHILLIP MILLER,
JANET NAPOLITANO, AND
ERIC HOLDER, JR.

JUDGE MINALDI

MAGISTRATE JUDGE KAY

REPORT AND RECOMMENDATION

Currently before the court is respondent's motion to dismiss or alternatively stay the petition for writ of *habeas corpus* filed by petitioner Seyba Diallo. Doc. 16. This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. 636 § (b)(1)(B).

Petitioner, Seyba Diallo, filed a petition for writ of *habeas corpus* pursuant to 22 U.S.C. § 2241 seeking his release from detention pending execution of a removal order issued against him. Petitioner alleges that his continued detention beyond six months is unconstitutional under the Supreme Court's ruling in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Doc. 1.

In its motion respondent submits that petitioner has been charged by indictment with two counts of violating 8 U.S.C. § 1253(a)(1)(C), hampering removal. *See* Doc. 16, att. 1, pp.8-10, Indictment, *United States v. Diallo*, No. 1:12-cr-00189 (W.D. La. Aug. 8, 2012). Since criminal charges have been instituted against petitioner, he was transferred from the custody of the Department of Homeland Security, Immigrations and Customs Enforcement ("ICE") to the

custody of the United States Marshals Service pending further proceedings in the criminal case.

See Minutes of Court of Initial Appearance and Arraignment, United States v. Diallo, No. 1:12-cr-00189 (W.D. La. Aug. 8, 2012), ECF No. 9.

Insofar as petitioner is no longer in the custody of the Department of Homeland Security, there is no longer a justiciable controversy before this court. *See Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004).

Accordingly,

IT IS RECOMMENDED that respondent's motion to dismiss be GRANTED.

IT IS FURTHER RECOMMENDED that the petition for writ of habeas corpus be DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER RECOMMENDED that petitioner's motion to hold case in abeyance or alternatively, motion for extension to time to file response to the government's response [doc. 24] be DENIED as MOOT.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) business days from receipt of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1429-30 (5th Cir. 1996).

THUS DONE this 25th day of September, 2012.



KATHLEEN KAY
UNITED STATES MAGISTRATE JUDGE